

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SEYYED JAVAD MAADANIAN,
Individually and on Behalf of All
Others Similarly Situated,

Plaintiff,

v.

MERCEDES-BENZ USA, LLC,
MERCEDES-BENZ
AKTIENGESELLSCHAFT, and
MERCEDES-BENZ GROUP
AKTIENGESELLSCHAFT,

Defendants.

CASE NO. 2:22-cv-00665

**STIPULATED AGREEMENT
REGARDING DISCOVERY OF
ELECTRONICALLY STORED
INFORMATION AND ORDER**

1 The parties hereby stipulate to the following provisions regarding the discovery of
2 electronically stored information (“ESI”) in this matter:

3 **A. General Principles**

4 1. An attorney’s zealous representation of a client is not compromised by conducting
5 discovery in a cooperative manner. The failure of counsel or the parties to litigation to cooperate
6 in facilitating and reasonably limiting discovery requests and responses raises litigation costs and
7 contributes to the risk of sanctions.

8 2. As provided in LCR 26(f), the proportionality standard set forth in Fed. R. Civ. P.
9 26(b)(1) must be applied in each case when formulating a discovery plan. To further the
10 application of the proportionality standard in discovery, requests for production of ESI and related
11 responses should be reasonably targeted, clear, and as specific as possible. This agreement is
12 intended to assist the parties in identifying relevant, responsive information that has been stored
13 electronically and is proportional to the needs of the case. The agreement does not supplant the
14 parties’ obligations to comply with Fed. R. Civ. P. 34.

15 **B. ESI Disclosures**

16 Within 30 days of entry of this Order, or at a later time if agreed to by the parties, each
17 party shall disclose:

18 1. Custodians. The custodians likely to have potentially relevant information in their
19 possession, custody, or control. The custodians shall be identified by name, title, connection to
20 the instant litigation, and the type of the information under the custodian’s control. The parties
21 are expected to meet and confer to establish the appropriate number of custodians to be disclosed
22 based on the complexity, proportionality and nature of the case. Disputes should promptly be
23 submitted to the Court for resolution. This disclosure provision is distinct from the parties’
24

1 agreement set forth in Section C below about determining the number of custodians from whom
2 ESI should be gathered.

3 2. Non-custodial Data Sources. A list of non-custodial data sources (*e.g.*, shared
4 drives, servers), if any, likely to contain potentially relevant information.

5 3. Third-Party Data Sources. A list of third-party data sources, if any, likely to
6 contain potentially relevant information (*e.g.*, third-party email providers, mobile device
7 providers, cloud storage) and, for each such source, the extent to which a party is (or is not) able
8 to preserve information stored in the third-party data source.

9 4. Inaccessible Data. A list of data sources, if any, likely to contain potentially
10 relevant information (by type, date, custodian, electronic system or other criteria sufficient to
11 specifically identify the data source) that a party asserts is not reasonably accessible under Fed.
12 R. Civ. P. 26(b)(2)(B). Section (D)(3) below sets forth data sources and ESI which are not
13 required to be preserved by the parties. Those data sources and ESI do not need to be included on
14 this list.

15 5. Foreign Data Privacy Laws. “Foreign Private Data” shall mean any personal or
16 private information that a Producing Party believes in good faith to be subject to foreign (*i.e.*,
17 non-US) data protection laws or other foreign privacy obligations, including without limitation:
18 the Directive 95/46/EC of the European Parliament and the Council of 24 October 1995 on the
19 protection of individuals with regard to the processing of personal data and on the free movement
20 of such data (the “EU Data Protection Directive”); Regulation (EU) 2016/679 of the European
21 Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard
22 to the processing of personal data and on the free movement of such data (“General Data
23 Protection Regulation”); the German Federal Data Protection Act (Bundesdatenschutzgesetz –
24

1 BDSG); and the German Telecommunications Act (Telekommunikationsgesetz – TKG). If any
2 Producing Party is called upon to produce Discovery Material in this lawsuit that contains Foreign
3 Private Data, such Producing Party may designate such Discovery Material as CONFIDENTIAL
4 under the terms of this Order. This Order does not address the redaction or withholding of Foreign
5 Private Data, if any. If a Producing Party wishes to redact or otherwise withhold Foreign Private
6 Data, the Producing Party shall meet and confer with the Receiving Party in advance of applying
7 any such redactions to discuss the scope of any proposed redactions before bringing any dispute
8 before the Court.

9 **C. ESI Discovery Procedures**

10 1. On-site inspection of electronic media. Such an inspection shall not be required
11 absent a demonstration by the requesting party of specific need and good cause or by agreement
12 of the parties.

13 2. Known Responsive ESI Must Be Produced. Documents or ESI known to be
14 responsive to a discovery request and that is/are not otherwise subject to objection shall be
15 produced, or logged on a privilege log, without regard to whether it was responsive to any search
16 methodology described herein or developed in accordance with this order.

17 3. Discrete Document Collections / Custodian Identified Files. Discrete folders or
18 collections of information believed by a Producing Party to be substantially comprised of
19 Documents relevant to the claims and defenses in this proceeding, such as a folder of Documents
20 gathered by a custodian because they believe the materials to be relevant, will be reviewed for
21 possible production without excluding any document from consideration using search terms or
22 other culling tools and will be prioritized for review and production.

1 4. Search methodology. If the Producing Party is identifying or culling potentially
2 relevant or responsive materials, which are not already known to be responsive, using search terms,
3 the parties shall timely confer to attempt to reach agreement on appropriate search terms and
4 queries, file type and date restrictions, data sources (including custodians), and other appropriate
5 computer- or technology-aided methodologies, before any such effort is undertaken. During the
6 meet and confer process, the Producing Party will disclose relevant English and foreign language
7 company terminology (or equivalent) and all relevant project and code names, code words,
8 acronyms, abbreviations, and nicknames, if any. The parties shall continue to cooperate in revising
9 the appropriateness of the search methodology.

10 a. Prior to running searches:

11 i. The producing party shall disclose the data sources (including
12 custodians), search terms and queries, any file type and date restrictions, and any other
13 methodology that it proposes to use to locate ESI likely to contain responsive and discoverable
14 information. The producing party may provide unique hit counts for each search query.

15 ii. After disclosure, the parties will engage in a meet and confer
16 process regarding additional terms sought by the non-producing party.

17 iii. The following provisions apply to search terms / queries of the
18 requesting party. Focused terms and queries should be employed; broad terms or queries, such
19 as product and company names, generally should be avoided. A conjunctive combination of
20 multiple words or phrases (*e.g.*, “computer” and “system”) narrows the search and shall count as
21 a single search term. A disjunctive combination of multiple words or phrases (*e.g.*, “computer”
22 or “system”) broadens the search, and thus each word or phrase shall count as a separate search
23 term unless they are variants of the same word. The producing party may identify each search
24

term or query returning overbroad results demonstrating the overbroad results and a counter proposal correcting the overbroad search or query.

iv. Nothing in this Order will limit a Producing Party's ability to review documents for responsiveness prior to production.

b. Upon reasonable request, a party shall disclose information relating to network design, the types of databases, database dictionaries, the access control list and security access logs and rights of individuals to access the system and specific files and applications, the ESI document retention policy, organizational chart for information systems personnel, or the backup and systems recovery routines, including, but not limited to, tape rotation and destruction/overwrite policy.

5. Validation of Search Methodology and Results. The Parties shall participate in a process in which they will meet and confer regarding reasonable and appropriate validation procedures and random sampling of Defendants' Documents (both of non-responsive sets and of the entire collection against which search terms were run or TAR or other identification or classification methodology was used), in order to establish that an appropriate level of end-to-end recall (the percentage of responsive Documents in the collection which were identified as responsive by Defendants' methodology) has been achieved and ensure that the Defendants' search methodology was reasonable and proportional to the needs of the case. To the extent the Parties cannot agree to the appropriate level of end-to-end recall, they will seek guidance from the Court. For the avoidance of doubt, any such validation and sampling process will not require Defendants to produce to Plaintiff information that is not relevant to any party's claim or defense or which is not proportional to the needs of the case.

6. Use of TAR. If a producing party plans to use technology-assisted review

1 (“TAR”), also known as “predictive coding,” to identify or cull documents to be reviewed or
2 produced, the producing Party will notify the Parties in advance to discuss an appropriate TAR
3 Protocol for that type of review. TAR processing will not be “stacked” with the application of
4 search terms, i.e., TAR will not be applied before or after any application of search terms.

5 7. Unsearchable Documents. If a party knows that the use of a particular search
6 methodology or terminology will be ineffective based on the text or format of particular
7 documents (because, for example, the document has light text and OCR is ineffective), those
8 documents must be reviewed by other means.

9 8. Format.

10 a. ESI will be produced to the requesting party with searchable text, in a
11 format to be decided between the parties. Acceptable formats include native format (for
12 spreadsheets and other documents that are not easily converted to image format) and single-page
13 TIFFs (only with load files for e-discovery software that includes metadata fields identifying
14 natural document breaks and also includes companion OCR and/or extracted text files). Extracted
15 text shall include all comments, revisions, tracked changes, speaker’s notes and text from
16 documents with comments or tracked changes, and hidden worksheets, slides, columns and rows.

17 b. Unless otherwise agreed to by the parties, files that are not easily converted
18 to image format, such as spreadsheet and drawing files, will be produced in native format. The
19 Parties will meet and confer regarding the production of structured data stored within databases.

20 c. Each document image file shall be named with a unique number (Bates
21 Number). File names should not be more than twenty characters long or contain spaces. When a
22 text-searchable image file is produced, the producing party must preserve the integrity of the
23
24

underlying ESI, *i.e.*, the original formatting, the metadata (as noted below) and, where applicable, the revision history.

d. If a document is more than one page, the unitization of the document and any attachments and/or affixed notes shall be maintained as they existed in the original document.

e. The parties shall produce their information in the following format: single-page images and associated multi-page text files containing extracted text or with appropriate software load files containing all information required by the litigation support system used by the receiving party.

f. The full text of each electronic document shall be extracted (“Extracted Text”) and produced in a text file. The Extracted Text shall be provided in searchable ASCII text format (or Unicode text format if the text is in a foreign language) and shall be named with a unique Bates Number (*e.g.*, the unique Bates Number of the first page of the corresponding production version of the document followed by its file extension).

9. De-duplication. The parties may globally de-duplicate their ESI production across custodial and non-custodial data sources after disclosure to the requesting party, and the duplicate custodian information extracted during the de-duplication process tracked in a duplicate/other custodian field in the database load file. Documents are considered exact duplicates if a document family or stand-alone file has a matching MD5 or SHA-1 hash value as compared against the same document type (*i.e.*, family or stand-alone file). Near-duplicate documents shall not be removed. Standalone documents shall not be deduplicated against email attachments. The names of all custodians and non-custodial sources who were in possession of a document prior to deduplication will be populated in the ALLCUSTODIANS metadata field. The original file paths

1 of a document prior to deduplication will be populated in the ALLFILE PATHS metadata field.¹
2 The producing party will make a reasonable effort to identify all custodians who were in
3 possession of the de-duplicated document.

4 10. Email Threading. The parties may use analytics technology to identify email
5 threads for their own internal review and other internal processes, although no email may be
6 withheld from production or not logged for privilege because it is included in whole or in part in
7 a more inclusive email.

8 11. Metadata fields. If the requesting party seeks metadata, the parties agree that only
9 the following metadata fields need be produced, and only to the extent it is reasonably accessible
10 and non-privileged: document type; custodian and duplicate custodians (or storage location if no
11 custodian); author/from; recipient/to, cc and bcc; title/subject; email subject; file name; file size;
12 file extension; all file paths; date and time created, sent, modified and/or received; whether has
13 hidden data, track changes, or comments; threadID; redactions; and hash value. The list of
14 metadata type is intended to be flexible and may be changed by agreement of the parties,
15 particularly in light of advances and changes in technology, vendor, and business practices.

16 12. Hard-Copy Documents. If the parties elect to produce hard-copy documents in an
17 electronic format, the production of hard-copy documents will include a cross-reference file that
18 indicates document breaks and sets forth the custodian or custodian/location associated with each
19 produced document. Hard-copy documents will be scanned using Optical Character Recognition
20 technology and searchable ASCII text files will be produced (or Unicode text format if the text is
21 in a foreign language), unless the producing party can show that the cost would outweigh the
22

23 ¹ If a Producing Party believes in good faith that producing File Path metadata field for a
24 particular document or set of documents is too burdensome, then the Parties shall meet and confer
in good faith before bringing any dispute before the Court.

1 usefulness of scanning (for example, when the condition of the paper is not conducive to scanning
2 and will not result in accurate or reasonably useable/searchable ESI). Each file will be named
3 with a unique Bates Number (*e.g.*, the unique Bates Number of the first page of the corresponding
4 production version of the document followed by its file extension).

5 13. Redactions. Those redactions permitted within a produced document or ESI item
6 are set forth by this Order or the Protective Order agreed and/or entered in this litigation.
7 Producing Party reserves the right to move the court for leave to determine whether certain
8 competitively sensitive non-relevant content with an otherwise responsive document can be
9 redacted on the grounds that the information is beyond the scope of relevance under Federal Rule
10 of Civil Procedure 26.

11 14. Parent-Child Relationships. Parent-child relationships (the association between an
12 attachment and its parent document or between embedded documents and their parents) shall be
13 preserved to the extent doing so is proportional to the needs of the case. Attachments should be
14 consecutively produced with their parent. If any member of a family group is produced, all
15 members of that group must also be produced or else logged as privileged. The Parties shall meet
16 and confer on the reasonableness, feasibility, and burden associated with the identification, search,
17 collection, and production of linked internal or non-public documents and their parents and process
18 for same.

19 15. Time Zone. All provided metadata pertaining to dates and times will be
20 standardized to CET.

21 **D. Preservation of ESI**

22 The parties acknowledge that they have a common law obligation, as expressed in Fed. R.
23 Civ. P. 37(e), to take reasonable and proportional steps to preserve discoverable information in
24

1 the party's possession, custody, or control. With respect to preservation of ESI, the parties agree
2 as follows:

3 1. Absent a showing of good cause by the requesting party, the parties shall not be
4 required to modify the procedures used by them in the ordinary course of business to back-up and
5 archive data; provided, however, that the parties shall preserve all discoverable ESI in their
6 possession, custody, or control.

7 2. The parties will supplement their disclosures in accordance with Fed. R. Civ. P.
8 26(e) with discoverable ESI responsive to a particular discovery request or mandatory disclosure
9 where that data is created after a disclosure or response is made (unless excluded under Sections
10 (D)(3) or (E)(1)-(2)).

11 3. Absent a showing of good cause by the requesting party, the following categories
12 of ESI need not be preserved:

- 13 a. Deleted, slack, fragmented, or other data only accessible by forensics.
- 14 b. Random access memory (RAM), temporary files, or other ephemeral data
15 that are difficult to preserve without disabling the operating system.
- 16 c. On-line access data such as temporary internet files, history, cache,
17 cookies, and the like.
- 18 d. Data in metadata fields that are frequently updated automatically, such as
19 last-opened dates (see also Section (E)(5)).
- 20 e. Back-up data that are duplicative of data that are more accessible
21 elsewhere.
- 22 f. Server, system or network logs.
- 23 g. Data remaining from systems no longer in use that is unintelligible on the
24 systems in use.
- 25 h. Electronic data (*e.g.*, email, calendars, contact data, and notes) sent to or
26 from mobile devices (*e.g.*, iPhone, iPad, Android devices), provided that
a copy of all such electronic data is automatically saved in real time
elsewhere (such as on a server, laptop, desktop computer, or "cloud")

storage).

E. Privilege

1. A producing party shall create a privilege log of all documents fully withheld from production on the basis of a privilege or protection, unless otherwise agreed or excepted by this Agreement and Order. Privilege logs shall include a unique identification number for each document and the basis for the claim (attorney-client privileged or work-product protection). For ESI, the privilege log may be generated using available metadata, including author/recipient or to/from/cc/bcc names; the subject matter or title; file path or, if not feasible, directory path (the location of a file or email at the time that it was collected, and date created/sent. Parties will also include a withdrawn field, which shall be populated if the privilege claim is withdrawn. Should the available metadata provide insufficient information for the purpose of evaluating the privilege claim asserted, the producing party shall include such additional information as required by the Federal Rules of Civil Procedure. Privilege logs will be produced to all other parties no later than 30 days after delivering a production unless an earlier deadline is agreed to by the parties.

2. Redactions need not be logged so long as the basis for the redaction is clear on the redacted document.

3. With respect to privileged or work-product information generated after the filing of the complaint, parties are not required to include any such information in privilege logs.

4. Activities undertaken in compliance with the duty to preserve information are protected from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).

5. Pursuant to Fed. R. Evid. 502(d), the production of any documents, electronically stored information (ESI) or information, whether inadvertent or otherwise, in this proceeding, or in any related proceeding or action, shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable

to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law. This Order shall be interpreted to provide the maximum protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply. Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review of documents, ESI or information (including metadata) for relevance, responsiveness and/or segregation of privileged and/or protected information before production. Information produced in discovery that is protected as privileged or work product shall be immediately returned to the producing party.

DATED: May 24, 2024

TOUSLEY BRAIN STEPHENS PLLC

By: s/ Kim D. Stephens
s/ Rebecca L. Solomon
 Kim D. Stephens, P.S., WSBA #11984
 Rebecca L. Solomon, WSBA #51520
 1200 Fifth Avenue, Suite 1700
 Seattle, Washington 98101
 Telephone: 206.682.5600
 Fax: 206.682.2992
 kstephens@tousley.com
 rsolomon@tousley.com

By: s/ Timothy W. Emery
s/ Patrick B. Reddy
 Timothy W. Emery, WSBA #34078
 Patrick B. Reddy, WSBA #34092
EMERY REDDY, PLLC
 600 Stewart Street, Suite 1100
 Seattle, WA 98101
 Phone: (206) 442-9106
 Fax: (206) 441-9711
 Email: emeryt@emeryreddy.com
 Email: reddyp@emeryreddy.com

James E. Cecchi*
 Caroline F. Bartlett*
 Jordan M. Steele*
CARELLA, BYRNE, CECCHI,

OLSTEIN, BRODY & AGNELLO, P.C.

5 Becker Farm Road
Roseland, New Jersey 07068
Telephone: (973) 994-1700
Facsimile: (973) 994-1744
jcecchi@carellabyrne.com
cbartlett@carellabyrne.com
jsteele@carellabyrne.com

Christopher A. Seeger*
Christopher L. Ayers*
SEEGER WEISS LLP
55 Challenger Road, 6th Floor
Ridgefield Park, NJ 07660
Telephone: (973) 639-9100
Facsimile: (973) 679-8656
cseeger@seegerweiss.com
cayers@seegerweiss.com

Zachary S. Bower*
**CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO, P.C.**
2222 Ponce DeLeon Blvd.
Miami, Florida 33134
Telephone: 973-422-5593
Facsimile: 973-994-1744
zbower@carellabyrne.com

Scott P. Schlesinger*
Jeffrey L. Haberman*
Jonathan R. Gdanski*
Sarah J. Schultz*
SCHLESINGER LAW OFFICES, P.A.
1212 SE Third Avenue
Ft. Lauderdale, FL 33316
Telephone: (954) 467-8800
scott@schlesingerlaw.com
jhaberman@schlesingerlaw.com
jgdanski@schlesingerlaw.com
sarah@schlesingerlaw.com

Attorneys for Plaintiffs and the Putative Class
** Admitted pro hac vice*

DATED: May 24, 2024

LANE POWELL PC

By: /s/ Erin M. Wilson
Erin M. Wilson (WSBA No. 42454)
wilsonem@lanepowell.com
John S. Devlin III (WSBA No. 23988)

devlinj@lanepowell.com
Taylor Washburn (WSBA No. 51524)
washburnt@lanepowell.com
Katie D. Bass (WSBA No. 51369)
bassk@lanepowell.com
1420 Fifth Avenue, Suite 4200
PO Box 91302
Seattle, WA 98111
Telephone: (206) 223-7000

WINSTON & STRAWN LLP

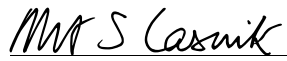
By: /s/ Dana L. Cook-Milligan
Troy M. Yoshino (*pro hac vice*)
tyoshino@winston.com
Eric J. Knapp (*pro hac vice*)
eknapp@winston.com
Dana L. Cook-Milligan (*pro hac vice*)
dlcook@winston.com
101 California Street, 35th Floor
San Francisco, CA 94111
Telephone: (415) 591-1000

*Counsel for Defendants
Mercedes-Benz USA, LLC,
Mercedes-Benz Aktiengesellschaft, and
Mercedes-Benz Group Aktiengesellschaft*

ORDER

Based on the foregoing, IT IS SO ORDERED.

Dated this 30th day of May, 2024.


Robert S. Lasnik
United States District Judge